Letter Report: The Internal Revenue Service Complied With Legal and Internal Guidelines When Seizing Property for Payment of Tax

May 2001

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This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

INSPECTOR GENERAL
for TAX
ADMINISTRATION

May 11, 2001

MEMORANDUM FOR COMMISSIONER, SMALL BUSINESS/
SELF-EMPLOYED DIVISION

Pamela J Gardiner

FROM: Pamela J. Gardiner
Deputy Inspector General for Audit

SUBJECT: Final Letter Report - The Internal Revenue Service Complied With Legal and Internal Guidelines When Seizing Property for Payment of Tax

This report presents the results of our review to determine if seizures performed by the Internal Revenue Service (IRS) adhered to the legal provisions set forth in 26 U.S.C. §§ 6330 through 6344 (1994 & Supp. IV 1998) and with the IRS' internal guidelines.

In summary, the IRS adhered to legal provisions and complied with internal guidelines in all cases reviewed. Accordingly, we are not making recommendations in this report. IRS management agreed with our audit observations. Management's comments have been incorporated into the report where appropriate, and the full text of their response is included as an appendix.

Copies of this report are also being sent the to appropriate IRS managers. Please contact me at (202) 622-6510 if you have any questions, or Maurice S. Moody, Associate Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs), at (202) 622-8500.

Objective and Scope

The objective of this audit was to determine if seizures performed by the Internal Revenue Service (IRS) complied with legal guidelines set forth in 26 U.S.C. §§ 6330 through 6344 (1994 & Supp. IV 1998) and with the IRS' internal guidelines. The Treasury Inspector General for Tax Administration (TIGTA) is required under 26 U.S.C. § 7803(d)(1)(A)(iv)(Supp. IV 1998) to annually evaluate the IRS' compliance with these legal seizure provisions. To accomplish the objective, we reviewed all 31 seizures (27 taxpayers) performed between January 1 and May 31, 2000, as identified from IRS records. Appendix III identifies the 16 offices where seizures were performed during this period.

We reviewed 31 seizures to determine if the IRS complied with legal and internal guidelines.

This audit was performed between October 2000 and February 2001, in accordance with *Government Auditing Standards*. It was not intended to determine if the decision to seize was appropriate in the 31 seizures we reviewed, and our analysis did not determine if this was the appropriate number of seizures for the period.

Major contributors to this report are shown in Appendix I. Appendix II contains the Report Distribution List.

Background

The collection of unpaid tax by the IRS generally begins with letters to the taxpayer followed by telephone calls and personal contacts by an IRS employee. The employees who make personal contact are referred to as revenue officers. They consider the taxpayer's ability to pay the tax and also discuss alternatives, such as installment payment agreements or offers-in-compromise. If these actions have been taken and the taxpayer has not fully paid the tax due, the revenue officer has the authority to take the taxpayer's funds or property for the

The IRS has the authority to take a taxpayer's property for failure to pay tax. This is commonly referred to as a "seizure."

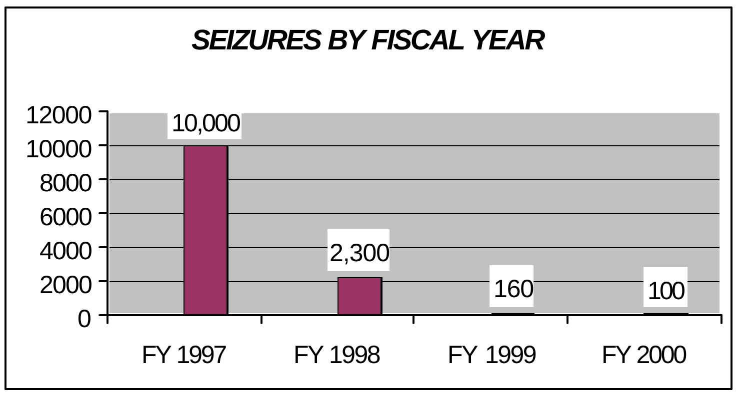
payment of tax. Taking a taxpayer's property for unpaid tax is commonly referred to as a "seizure."

The provisions in 26 U.S.C. §§ 6330 through 6344 are very specific regarding how a seizure should be performed.

The IRS Restructuring and Reform Act of 1998 (RRA 98)[1] placed particular emphasis on taxpayer rights and amended the seizure provisions in 26 U.S.C. §§ 6330 through 6344 (1994 & Supp. IV 1998). These provisions and the IRS' internal guidelines are very specific regarding how a seizure should be performed. See Appendix IV for a synopsis of 26 U.S.C. §§ 6330 through 6344.

Seizure volume has decreased significantly since enactment of the RRA 98.

Since enactment of the RRA 98, the number of seizures has significantly decreased. The following table shows the approximate number of seizures for the past four Fiscal Years (FY).



Source: IRS National Office Collection (5000-23 Report)

The TIGTA has previously evaluated the IRS' compliance with the RRA 98 seizure provisions in both FY 1999 and FY 2000. In FY 1999,[2] the IRS did not follow all legal and internal guidelines in

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[1] Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C., 5 U.S.C. App., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

[2] *The Internal Revenue Service Needs to Improve Compliance with Legal and Internal Guidelines When Taking Taxpayers' Property for Unpaid Taxes* (Reference Number 199910072, dated September 1999).

33 of the 92 (36 percent) taxpayer seizure cases reviewed. In FY 2000,[3] actions taken by the IRS were in accordance with the legal and internal guidelines in all 34 taxpayer seizure cases reviewed.

We refer to IRS offices and management titles using their names prior to the IRS reorganization in October 2000.

Effective October 1, 2000, the IRS reorganized its geographical and management structures. As a result, names of offices and titles changed. Because all the seizures we reviewed were performed prior to the reorganization, we refer to the offices and management titles under the former structure in this report.

Results

The IRS continued to comply with all legal and internal guidelines when taking taxpayers' property for the payment of tax. In addition, the former National Collection management revised the Seizure and Sale Handbook in July 2000 to require re-verification of taxpayer ownership of property as recommended in the FY 2000 report. However, this procedure was not tested because all of the seizures reviewed were performed prior to the date of the revision.

The Internal Revenue Service Complied With Legal and Internal Guidelines When Performing Seizures

The IRS continued to comply with all legal and internal guidelines when seizing property. This was primarily attributed to management's continued emphasis and involvement with seizures.

All 31 seizures performed during January 1 through May 31, 2000, as identified from IRS records, were accomplished in accordance with 26 U.S.C. §§ 6330 through 6344 (1994 & Supp. IV 1998) and with the IRS' internal guidelines. The IRS' total compliance with legal provisions and internal guidelines is attributed to management's continued emphasis on following the

[3] *The Internal Revenue Service has Significantly Improved Compliance with Legal and Internal Guidelines When Seizing Taxpayers' Property* (Reference Number 200010114, dated August 2000).

seizure guidelines, to management's involvement in the review and approval process, and to legal guidelines which have remained relatively unchanged since July 22, 1998.

Emphasis of seizure guidelines by IRS management

IRS management emphasized seizure guidelines and made them easier to use.

IRS management has emphasized seizure guidelines and also made them easier to use. The internal guidelines were combined into the Seizure and Sale Handbook in April 1999 and are now available to all revenue officers via the IRS computer network. A new index and key word search capability also made the handbook easier to use. In addition, a pre-seizure checklist and approval document was included and serves as the primary tool for management to ensure that all required actions prior to seizure are taken.

As a result of the FY 1999 review, a National Collection memorandum was issued to all districts in December 1999. The memorandum clarified some guidelines, such as proper approval for seizure of individual taxpayers' business assets. It also stressed the importance of following established procedures, including, performing risk analyses, using seizure and sale checksheets, and documenting case files because of taxpayer potential eligibility for restitution or civil damages.[4]

A high level of involvement by IRS management

We observed multi-level approval for all seizures.

IRS management's involvement in the seizure approval process ensured that all seizures were performed appropriately. Three levels of management approved all 31 seizures. Generally, the revenue officer submitted the case file to the immediate manager for review and approval. The file was then forwarded to the second level of management (Branch Chief) and then to the third level of management (Division Chief) for approval.

[4] For certain unauthorized collection actions, 26 U.S.C. § 7433 (1994 & Supp. IV 1998) permits the taxpayer to bring a civil action against the United States for damages where any officer or employee of the IRS recklessly or intentionally, or by reason of negligence, disregards the legal provisions.

The District Director or Assistant District Director, the fourth level of management, also approved 15 of 31 (48 percent) seizures.

In 13 of the 16 offices where seizures were performed, Special Procedures function (SPf) advisors or District Counsel attorneys provided technical assistance to ensure that employees understood and followed all guidelines. SPf advisors provided advice prior to seizure for 25 of 31 cases (81 percent), and District Counsel provided legal advice or services for 21 of 31 (68 percent) cases.

No recent legal or procedural changes

Legal guidelines have remained relatively unchanged since enactment of the RRA 98.

The RRA 98 was signed into law on July 22, 1998. The seizure handbook incorporating these changes was issued in April 1999, and training of revenue officers was completed in December 1999. Since the RRA 98, legal provisions have remained relatively unchanged. As a result, revenue officers have had time to become more knowledgeable of the legal provisions and internal guidelines for seizing taxpayers' property.

Conclusion

All 31 seizures performed during January 1 through May 31, 2000, as identified from IRS records, were accomplished in accordance with 26 U.S.C. §§ 6330 through 6344 (1994 & Supp. IV 1998) and with the IRS' internal guidelines. This total compliance is attributed to IRS management's continued emphasis on following the seizure guidelines, management's involvement in the review and approval process, and legal provisions that have remained relatively unchanged since July 22, 1998.

Management's Response: The IRS agreed with a draft of this report and stated that it recognized its efforts were successful due to the support and diligence of its national and local staff. Management further stated that their goal is to continue to improve the seizure program and to ensure that they protect taxpayer rights and promote customer service.

Appendix I

Major Contributors to This Report

Maurice S. Moody, Associate Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs)
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Julia M. Collins, Auditor
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Appendix II

Report Distribution List

Commissioner N:C
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Chief Counsel CC
Director, Compliance, Small Business/Self-Employed Division S:C
Director, Office of Program Evaluation and Risk Analysis N:ADC:R:O
Director, Legislative Affairs CL:LA
National Taxpayer Advocate TA
Office of Management Controls N:CFO:F:M
Audit Liaison:
    Director, Compliance, Small Business/Self-Employed Division S:C

Appendix III

District Offices Where Seizures Were Performed Between January 1 and May 31, 2000[1]

Region	District Office
Northeast	New Jersey Pennsylvania Upstate New York
Southeast	Delaware-Maryland Indiana Kentucky-Tennessee Virginia-West Virginia
Midstates	Houston, Texas Midwest North Texas South Texas
Western	Los Angeles, California Northern California Pacific-Northwest Southern California Southwest

[1] Effective October 1, 2000, the Internal Revenue Service reorganized its geographical and management structures. As a result, names of offices and titles changed. Because all the seizures we reviewed were performed prior to the reorganization, we refer to the offices and management titles under the former structure in this report.

Appendix IV

Synopsis of the Seizure Procedures Contained in 26 U.S.C. §§ 6330 through 6344 (1994 & Supp. IV 1998)

26 U.S.C. § 6330 (Supp. IV 1998) requires the Internal Revenue Service (IRS) to issue the taxpayer a notice of his or her right to a hearing prior to seizure action. The notice must be (1) given in person, (2) left at the taxpayer's home or business, or (3) mailed certified-return receipt requested, not less than 30 days before the day of the seizure. The notice must explain in simple terms: (1) the amount owed, (2) the right to request a hearing during the 30-day period, and (3) the proposed action by the IRS and the taxpayer's rights with respect to such action.

The statute of limitations for collection is suspended from the time a taxpayer requests a hearing and while such hearings and appeals are pending, except where the underlying tax liability is not at issue in the appeal and the court determines the IRS has shown good cause not to suspend the seizure. No limitation period may expire before 90 days after a final determination. These procedures do not apply to jeopardy situations.

26 U.S.C. § 6331 (1994 & Supp. IV 1998) authorizes the IRS to seize a taxpayer's property for unpaid tax after sending the taxpayer a 30-day notice of intent to levy. This section also prohibits seizure: (1) during a pending suit for the refund of any payment of a divisible tax, (2) before a thorough investigation of the status of any property subject to seizure, or (3) while either an offer-in-compromise or an installment agreement is being evaluated, and 30 days thereafter for appeal of rejection of the offer-in-compromise or installment agreement.

26 U.S.C. § 6332 (1994 & Supp. IV 1998) requires a third party in possession of property subject to seizure to surrender such property when a levy notice is received. It contains sanctions against third parties that do not surrender such property when a levy notice is received.

26 U.S.C. § 6333 (1994 & Supp. IV 1998) requires a third party with control of books or records containing evidence or statements relating to property subject to seizure to exhibit such books or records to the IRS when a levy notice is received.

26 U.S.C. § 6334 (1994 & Supp. IV 1998) enumerates property exempt from seizure. The exemption amounts are adjusted each year and include $6,360 in fuel, provisions, furniture and personal effects, and $3,180 in books and tools necessary for business purposes for the year 2000. Also, any primary residence, not just the taxpayer's, is exempt from seizure when the amount owed is $5,000 or less. Seizure of the taxpayer's principal residence is allowed only with approval of a United States (U.S.) District Court judge or magistrate. Property used in the taxpayer's business is exempt except with written approval of the District Director or Assistant District Director, and may only be approved if other assets are not sufficient to pay the liability.

26 U.S.C. § 6335 (1994 & Supp. IV 1998) contains procedures for the sale of seized property. Notice must be given to the taxpayer, the property must be advertised in the county newspaper or posted at the nearest post office, and such notices shall specify the time, place, manner, and conditions of sale. It requires the property be sold not less than 10 days or more than 40 days from the time of giving public notice. Finally, this section expressly prohibits selling seized property for less than the minimum bid.

26 U.S.C. § 6336 (1994 & Supp. IV 1998) contains procedures for the accelerated disposition of perishable property. This is property such as fresh food products or any property that requires prohibitive expenses to maintain during the normal sale time frame. The property may either be sold quickly or returned to the taxpayer in exchange for payment of a bond.

26 U.S.C. § 6337 (1994 & Supp. IV 1998) allows the taxpayer to redeem seized property prior to sale by paying the amount due plus the expenses of the seizure. It also allows a taxpayer to redeem real property within 180 days of the sale by paying the successful bidder the purchase price plus 20 percent per annum interest.

26 U.S.C. § 6338 (1994 & Supp. IV 1998) requires the IRS to give purchasers of seized property a certificate of sale upon full payment of the purchase price. This includes issuing a deed to real property after expiration of the 180-day period required by the 26 U.S.C. § 6337. The deed is exchanged for the certificate of sale issued at the time of the sale.

26 U.S.C. § 6339 (1994 & Supp. IV 1998) provides the legal effect of the certificate of sale for personal property and the transfer deed for real property.

26 U.S.C. § 6340 (1994 & Supp. IV 1998) requires each district office to keep a record of all sales of seized property. This record must include the tax for which such sale was made, the dates of seizure and sale, the name of the party assessed, all proceedings in making such sale, the amount of expenses, the names of the purchasers, and the date of the deed or certificate of sale of personal property. The taxpayer will be furnished (1) the information above except the purchasers' names, (2) the amount from such sale applied to the taxpayer's liability, and (3) the remaining balance of such liability.

26 U.S.C. § 6341 (1994 & Supp. IV 1998) allows expenses for all seizure and sale cases.

26 U.S.C. § 6342 (1994 & Supp. IV 1998) enumerates how the proceeds of a seizure and sale are to be applied to a taxpayer's account. Proceeds are applied first to the expenses of the seizure and sale proceedings. Then, any remainder is applied to the taxpayer's liability.

26 U.S.C. § 6343 (1994 & Supp. IV 1998) outlines various conditions under which a seizure may be released and property returned to the taxpayer. These conditions include full payment of the liability, determination of a wrongful seizure, financial hardship, etc. This section allows a consent agreement between the U.S. and either the taxpayer or the National Taxpayer Advocate when the return of seized property would be in the taxpayer's best interest.

26 U.S.C. § 6344 (1994 & Supp. IV 1998) contains cross-references for 26 U.S.C. §§ 6330 through 6344.

Appendix V

Management's Response to Draft Report

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

COMMISSIONER
SMALL BUSINESS/SELF-EMPLOYED DIVISION

RECEIVED
MAY 03 2001

May 2, 2001

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Carolyn Wallace for
Joseph G. Kehoe
Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Letter Report –The Internal Revenue Service Complied With Legal and Internal Guidelines When Seizing Property for Payment of Tax

I appreciate your recognition that the IRS complied with all of the legal and technical guidelines when seizing property for payment of tax.

Your letter report attributed this to management's continued emphasis and involvement with the seizure program, and the fact that legal provisions have remained relatively unchanged since the Restructuring and Reform Act of 1998.

We agree with your report and recognize our efforts were successful due to the support and diligence of our staff, both national and local. Our goal is to continue to improve the seizure program, and to ensure we protect taxpayer rights and promote customer service. We will work with you during your annual mandatory review of the seizure program as we work to accomplish this goal.

We did not identify any information that warrants protection under the Freedom of Information Act.

If you have any questions, please contact Martha Sullivan, Deputy Director, Compliance Policy at (202) 622-5563.